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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY PETITION NO. 652 OF 2001
WITH
JUDGE'S ORDER NO. OF 2006

Mahendra Shantilal Shah …Petitioner
And
Shantilal Ganpatlal Dalal …Deceased

Mr. Viral Shukla, *i/b M/s. Shukla & Associates, for the Petitioner.*

CORAM: G.S. PATEL, J
DATED: 3rd February 2015

PC:-

1. This Petition was dismissed on 11th July 2005 for non-prosecution. A Judge's Order was filed thereafter in August 2006. The Judge's Order itself seeks a restoration of the Petition. However, the affidavit in support affirmed on 18th August 2006 states in paragraph 3 that the Petitioner had instructed his Advocate to withdraw this Petition. The Advocate applied for withdrawal by a praecipe dated 2nd March 2005 and also sought a refund of court fees.

2. In the meantime, while pursuing the application for refund, the Advocate learnt of the order of dismissal.

3. Clearly, this indicates that the Petitioner did not wish to pursue the Petition at all. The only thing what the Petitioner sought to pursue was an application for a refund of Court Fees. This was rendered impossible because the Petition had not formally been allowed to be withdrawn but had been dismissed instead.

4. So as to leave the Petitioner no room for grievance, the Judge's Order is allowed. The Petition is restored to file.

5. The Testamentary Petition is now dismissed as withdrawn. Refund of court fees in accordance with the Rules.

6. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J.)